

# Too Much Power Rests with the National Conference of Bar Examiners

Opaque organization's licensing test is a disservice to law graduates and the public.

BY NICHOLAS W. ALLARD

Trying to improve the broken bar-exam system for licensing lawyers has been for too long like tilting at windmills while singing "The Impossible Dream."

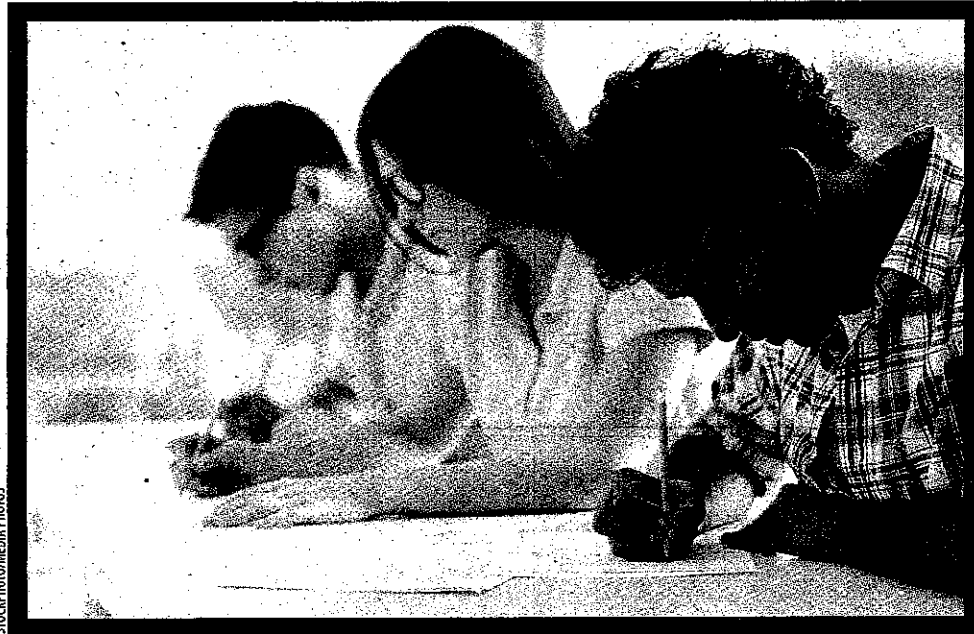
There is a disconnection between what the bar exam tests and what the American Bar Association and law schools require students to learn. Graduates must enroll in costly cram courses, forgo gainful employment for almost three months and incur collectively hundreds of millions of dollars in costs and lost income to survive the semiannual culling of the herd. Nor does the bar exam, which relies heavily on questions developed and scored by the National Conference of Bar Examiners, measure what one needs to know to be an effective lawyer.

Last July's historic nationwide drop in the bar passage rate brought into sharp focus the urgent need to overhaul a system that ill serves the public, the profession and certainly the graduates of our law schools. Over the past several months, fellow deans across the country have asked for a complete, credible and accurate explanation of the July 2014 results. We still are waiting.

Unfortunately, the National Conference of Bar Examiners has been dismissive of our concerns and unforthcoming with critical information. Perhaps in an attempt to stave off a deeper look into what happened with the July exam, the National Conference president wrote to law school deans in October, before the results became public and before anyone knew there was a problem, that its internal "review" showed "the results are correct." Blame was placed squarely on the test-takers themselves, with the National Conference president calling them "less able" than the group that sat in July 2013.

This is unsupported nonsense. In fact, expert commentators have shown through statistical analysis that, contrary to the claims by the National Conference, the Law School Admission Test scores in 2014 were comparable to the previous year's and that, in any event, the bar-exam results do not correlate with any measurable change in LSATs. An important new expert analysis by Professor Deborah Merritt at Ohio State University Michael E. Moritz College of Law strongly suggests that National Conference of Bar Examiners' scoring errors were the source of the problem with the July 2014 exam. Clearly, we need a better, more open and more honest way to license lawyers.

Our adherence to a deeply flawed test as the best of all possible ways to license lawyers creates unnecessary hardships for new lawyers and the public. We must



consider how our bar-exam system erects guild-like barriers and discourages talented individuals, especially students who do not come from privileged backgrounds, from pursuing law careers. Why should promising students spend years working hard in a demanding law school program only to have their new career derailed by an expensive all-or-nothing test with little relevance to the practice of law?

## STEPS TO CREATE CHANGE

Change is difficult. Taking on a powerful organization with a virtual monopoly over the bar-exam system is daunting. However, the good news is that we can take practical steps to begin to create a rigorous, comprehensive, workable and transparent new system that will help ensure that well-qualified candidates enter the profession.

First, we need an independent audit of the July 2014 bar-exam results and all results going forward. A national permanent commission should be established that, on an ongoing basis, would study, evaluate and make recommendations on how to efficiently and accurately measure competency and reduce barriers and costs to entering the profession. Commission members should be appointed by a national leader with sufficient status and independence of the testing industry and its web of interests, such as the chief justice of the United States or the U.S. attorney general. The commission should include state chief justices, law-school deans, practitioners, public and private interest groups and consumers of legal services.

On the state and national levels, we need to compile, analyze and publicize data on bar-examination results each year to determine if there is evidence of dispa-

rate impact on historically disadvantaged groups, such as minorities and people who are not wealthy. The annual reports also should address the impact of licensing practices on access to affordable legal services for the underserved public and small businesses.

We should develop effective, rigorous methods—beyond a written test—to evaluate and measure practical, clinical skills and professional experience.

We must investigate and pilot alternative methods of assessing law students—for example, testing at milestone points in a law student's career, such as evaluating core competencies after the first year, instead of relying solely on an all-or-nothing exam after graduation. We also should look to other professions, to states exploring innovative approaches and internationally for ideas on evaluating and licensing professionals, as well as ways to assess lawyers throughout their careers.

The aim of these measures is to maintain and advance the best standards for admission to the bar. If we do not now seize the opportunity to undertake significant improvements in how we test and license lawyers, we will impose a serious self-inflicted wound on our profession and the country. A testing organization should not determine the future of the legal profession. Let us take back that power and invest it where it belongs: with the ABA, state courts and state bars, and law school boards and faculty, as well as the people and businesses who need affordable legal services. Let us begin a national conversation to improve our entrenched and dysfunctional system for licensing attorneys.

*Nicholas W. Allard is president, Joseph Crea Dean and professor of law at Brooklyn Law School.*

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